

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MEGHAN WALLBLOM, as
beneficiary and as personal
representative of the Estate of
Charles Smith,

Plaintiff,

V.

**TYCO INTERNATIONAL
MANAGEMENT COMPANY, LLC
BENEFIT PLAN,**

Defendant/Third-Party Plaintiff.

V.

AETNA LIFE INSURANCE COMPANY,

Third-Party Defendant.

NO. 2:15-cv-00135-JLQ

ORDER RE: WITHDRAWAL OF
PLAINTIFF'S AMENDED MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT is Plaintiff's Notice to Strike Its Motion for Summary Judgment (ECF No. 45) filed by attorney Brian Sheldon. Plaintiff seeks to withdraw her Amended Motion for Summary Judgment (ECF No. 18), Statement of Facts (ECF No. 19), and Affidavit of Counsel (ECF No. 20). The court previously allowed withdrawal of Plaintiff's first Motion for Summary Judgment at her request. *See* ECF No. 21. Plaintiff now seeks to withdraw her Amended Motion for Summary Judgment. This is the second time Plaintiff has filed a "Notice" to withdraw a motion but did not file a motion for leave to withdraw, which is the proper method to withdraw a previously filed motion. *See e.g.*, *Marchand v. Grant County*, No. CV-06-0152-MWL, 2007 WL 295544 (E.D. Wash.

ORDER - 1

1 January 29, 2007). Despite the failure to proceed properly, the court will allow withdrawal
2 of Plaintiff's Amended Motion for Summary Judgment (ECF No. 18) and strike the
3 hearing set for November 19, 2015. The court notes that a significant amount of time and
4 resources have been spent by counsel on two dispositive motions that were subsequently
5 withdrawn, the latest of which also involved defense counsel's time in preparing and filing
6 a response.

7 Plaintiff's Notice also contains a "request" for leave to amend pleadings "to
8 properly align the claims to conform with the current status of the case." ECF No. 45 at 2.
9 The "request" is not a motion, does not present any specific facts or authority, and does
10 not provide Defendant an opportunity to respond to the "request." Insofar as Plaintiff
11 intended her "request" to be a motion, that "motion" is denied. If Plaintiff desires to
12 amend her pleadings, the proper course of action is to file a factually and legally supported
13 Motion for Leave to Amend which allows Defendant the opportunity to respond to the
14 motion. In addition, since the time for amending pleadings set forth in the Scheduling
15 Order has passed, any motion for leave to amend should address Fed.R.Civ.P. 16.4(b). *See*
16 ECF No. 11 at 2.

17 **IT IS HEREBY ORDERED:**

18 1. Plaintiff's Amended Motion for Summary Judgment (ECF No. 18) is
19 **WITHDRAWN.**

20 2. The hearing on Plaintiff's Motion for Summary Judgment is **STRICKEN**.

21 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and furnish
22 copies to counsel.

23 **DATED** this 29th day of October, 2015.

24 s/ Justin L. Quackenbush
25 JUSTIN L. QUACKENBUSH
26 SENIOR UNITED STATES DISTRICT JUDGE